



February 4, 1999

Mr. Eric Bost  
Commissioner  
Texas Department of Human Services  
701 West 51<sup>st</sup> Street  
Austin, Texas 78714-9030

OR99-0326

Dear Mr. Bost:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121728.

The Department of Human Services ("DHS") received a request for the statements of witnesses to alleged sexual harassment. You submitted to this office documents that you believe contain information which is protected from disclosure on the basis of third parties' privacy interests. The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* at 525.

We note that in *Ellen*, the public interest in knowing the details of the complaints of sexual harassment in the work place had already been served by the release of the statement of the person under investigation and also of the report with conclusions by the board of inquiry. You do not indicate, however, that DHS has created a de-identified final report that adequately summarizes the details of the complaints and actions taken in response. You have provided to this office a memorandum dated October 21, 1998, which contains some

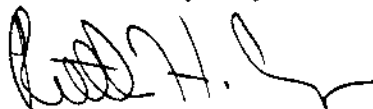
information about the complaints, but it does not provide sufficient detail to serve the public interest. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees).

We also note that while the court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity, the court did hold that the public possesses a legitimate interest in full disclosure of the facts surrounding employee discipline in this type of situation. *Id.* at 525. We believe that there is a legitimate public interest in both the identity of public employees accused of sexual harassment in the workplace and the details of the complaints, regardless of the outcome of the investigation. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees); 423 at 2 (1984) (scope of public employee privacy is generally narrow).

The statements provided appear to be from witnesses to the alleged sexual harassment incidents. Pursuant to the court's decision in *Ellen*, we have marked identifying information about these witnesses and also identifying information about the victims of the alleged harassment. This identifying information includes names, telephone numbers, addresses, and job titles or descriptions. We also have identified other information in the statements about third parties which is both intimate or embarrassing and also of no legitimate public concern. You must redact the information marked as protected from disclosure under sections 552.101 and 552.102.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 121728

Enclosures: Marked documents